BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Linkup	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

FNPRM REPLY COMMENTS
SECTIONS XVII A-K

Montana Independent Telecommunications Systems, LLC
(MITS)

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I. INTRODUCTION

Montana Independent Telecommunications Systems, LLC (MITS) respectfully submits its response to comments on the Commission's *Order and FNPRM.*

MITS is a statewide association of Montana rural telecommunications providers serving areas that are among the most remote, sparsely populated, and high-cost areas within the continental United States.[1] MITS members are cooperative or cooperative affiliated companies. They provide high quality telecommunications and broadband using a variety of technologies including wireline, mobile wireless, fixed wireless, and satellite.

II. BACKGROUND
A MONTANA PERSPECTIVE

The service area topography for MITS companies ranges from that typical of the rugged, mountainous areas of western Montana to that characteristic of the Great Plains spanning the central and eastern portions of the state. Numerous exchange boundaries of MITS members are contiguous to the U.S.-Canadian border. The majority of MITS members serve Tribal Lands. Montana's climate and weather can be extreme. Nature often places its own limitations on construction seasons and proposals for network build-outs.

Montana is the Nation's fourth largest state standing in line behind Alaska, Texas, and California. According to the 2010 U.S. Census, Montana has a population of 989,415 scattered across its 147,046 square miles. The service areas of MITS members range from approximately 1,000 to 30,000 square miles. In aggregate, MITS members serve 71,300 square miles, 48% of Montana's land mass, with an average population density of only 1.6 persons/square mile.

When supplemented with the detailed population density information compiled by the latest U.S. Census, a stark picture emerges underscoring precisely why the Universal Service Principles, set forth within the Federal Telecommunications Act of 1996, are so critical to states like Montana. The Universal Service Principles statutorily establish the mandatory base for Federal policies to ensure the preservation and advancement of universal telecommunications throughout all parts of our Nation. Universal access to affordable telecommunications and

[1] MITS members are Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Triangle Telephone Cooperative Association, Central Montana Communications, InterBel Telephone Cooperative and Mid-Rivers Telephone Cooperative, Inc.

broadband is essential to the sustainability not only of telecommunications providers but also to the sustainability of rural communities and rural economies. The networks and infrastructure in which rural providers and rural consumers have invested are the base of and conduits for scalable global communications and technology.

The Big Sky Country of Montana is larger in area than the combined areas of Maryland, Connecticut, Massachusetts, Rhode Island, New York, New Hampshire, Vermont, Virginia, and the District of Columbia. Yet the 2010 U.S. Census data taps Montana with less than a million people. Delving deeper into the Census data, one finds that Montana, irrespective of its size, is the seventh least populated state and the third least densely populated state of the Union. Its population growth between the 2000 Census and the 2010 Census was less than 10%. In 2010, officially 75% of all Montana cities, towns, and CDP's had fewer than 1,000 people.[2] In sum, Montana is a huge state with a small population. As the locals say, out here there is a lot of dirt (or snow) between light bulbs.

That dirt includes two National Parks: Glacier National Park adjacent to Canada's Waterton National Park and portions (including three of the five entrances) of Yellowstone National Park. Montana is home to seven Indian Reservations, as well as the Little Big Horn National Battlefield, the site where General George Armstrong Custer and 260 soldiers and personnel of the U.S. 7th Cavalry meet defeat and death with their "Last Stand" clash with the Lakota and Cheyenne Nations. It was in Montana that President Jefferson's Lewis and Clark Expedition dolefully discovered the headwaters of the Missouri River, negating the hope of a navigable Inland Passage connecting the Atlantic and Pacific Oceans.

Why are those historical facts relevant to these comments? Today, in 2012, if one stands before the snowfields of Glacier, the rivers and trails leading into Yellowstone, the graves of fallen soldiers scattered within the tall prairie grass near the banks of the Little Bighorn, the meandering Missouri River winding its way through the great white cliffs near Fort Benton, one views virtually the same backdrop as seen by those who came before us. Change comes slowly to Montana's landscape, a reality that may be unique to our vast state.

Montana's primary economies are integrally linked to our land and to our people. While tourism brings millions of visitors annually to our state, it is the agriculture and natural resource industries that are the lifeblood of our economy. Montana's hydroelectric dams and emerging

[2] 2010 U.S. Census data

wind farms provide energy far beyond the boundaries of our state. Wheat from our farms and cattle from our ranches feed families in America and in far-away countries. The vast Bakken oil fields in Montana and North Dakota offer hope that in the not too distant future, America can be self-sufficient in the production of oil and natural gas. New technologies are rekindling interest in mining Montana's gold, silver, and palladium resources.

What is the common thread critical to the continued viability and economic success of Montana's rural-based economy? Preserving and advancing consumer access to affordable telecommunications and advanced broadband services. The Universal Service principles of comparable and predictable services and rates for all Americans are absolutely critical to Montana's economic future and to the sustainability and expansion of telecommunications and broadband within our extremely rural state.

BACKGROUND
Three D's: Distance, Density, Demand
Aggregation and Communities of Interest

Montana is a high cost state. The three D's of Distance, Density, and Demand are especially challenging for us. Like our vast distances, density also delineates our state from most others. Montana's Big Seven is a colloquial reference to the *only seven cities having a population greater than 10,000. Only three of the seven have populations greater than 50,000*: Billings (104,170), Missoula (66,788) and Great Falls (58,505). There is a significant drop in the 10,000-50,000 population bracket with just *four cities* falling in that category: Bozeman (37,280), Butte-Silver Bow (33,525), Helena (28,190), and Kalispell (19,927). Only seven cities located within Montana's 147,046 square miles have more than 10,000 people. *Not a single one of MITS member companies serves any of those seven cities.*

Fifteen Montana towns have populations between 5,000 and 10,000. No MITS companies serve any of those towns as an ILEC. However, one of MITS members, Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers), is a CLEC in three towns in this bracket: Miles City (8,410), Lewistown (5,901) and Sidney (5,191). It deployed broadband capable networks to bring both voice and data to the technology-starved consumers in those towns.

Twenty-eight Montana towns have populations between 2,000 and 5,000. One of MITS members is an ILEC in two of those towns: Nemont Telephone Cooperative, Inc. (Nemont)

serves Glasgow (3,250) and Wolf Point (2,621). Mid-Rivers is a CLEC in one of the towns: Glendive (4,935).

Thirty-nine Montana towns and CDP's have populations within the 1,000 to 2,000 population bracket. MITS members serve 12 of those towns: Nemont is an ILEC serving Plentywood (1,734) and Scobey (1,734). Project Telephone Co. (Project) is an ILEC serving Crow Agency (1,616) and Absarokee (1,150). Triangle is an ILEC serving Chinook (1,203) and Big Timber (1,641). Central Montana Communications (CMC) is the ILEC which serves Fort Benton (1,464), Fort Belknap Agency (1,293) and Malta (1,997), while Mid-Rivers is the ILEC serving Roundup (1,788) and Baker (1,741). Finally, InterBel Telephone Cooperative, Inc. (InterBel) is the CLEC serving Eureka (1,037) and the ILEC serving rural Eureka.

All the other towns and CDPs within the MITS members' service areas are among the 276 Montana communities that have fewer than 1,000 people. Small towns are not extraordinary for Montana. According to the U.S. Census data, *75.8% of all Montana cities, towns, and CDPs have fewer than 1,000 people.* [3]

Limited density puts to test reliable cost recovery business models that may be successful in more heavily-populated areas. This fact cannot be ignored by those determining the real world impacts of proposed revisions to universal service and intercarrier compensation.

Providers and consumers alike confront the clout of the third D: Demand. Congress in its wisdom acknowledged the power of demand when, in setting parameters for universal service definitions, it required the Federal-State Joint Board and the FCC to consider the extent to which telecommunications services were "through market choices by consumers, …subscribed to by a substantial majority" and were being "deployed in public telecommunications networks by telecommunications carriers."[4]

The USDA through its Rural Utility Program (RUS) has left huge, positive footprints in Montana. The RUS and its predecessor, the Rural Electrification Administration (REA), opened the technology doors and turned on the lights for most rural Montanans. MITS member companies have relied heavily on loans from RUS and other lenders to extend high quality, scalable networks to rural consumers. Millions of RUS dollars, along with sufficient, specific,

[3] Source of population data is the U.S. Census 2010; CDP is a Census Designated Place, populated areas that lack a separate municipal government but which otherwise physically resemble incorporated places such as cities and towns.
[4] 47 USC§254(c)(1)(B & C).

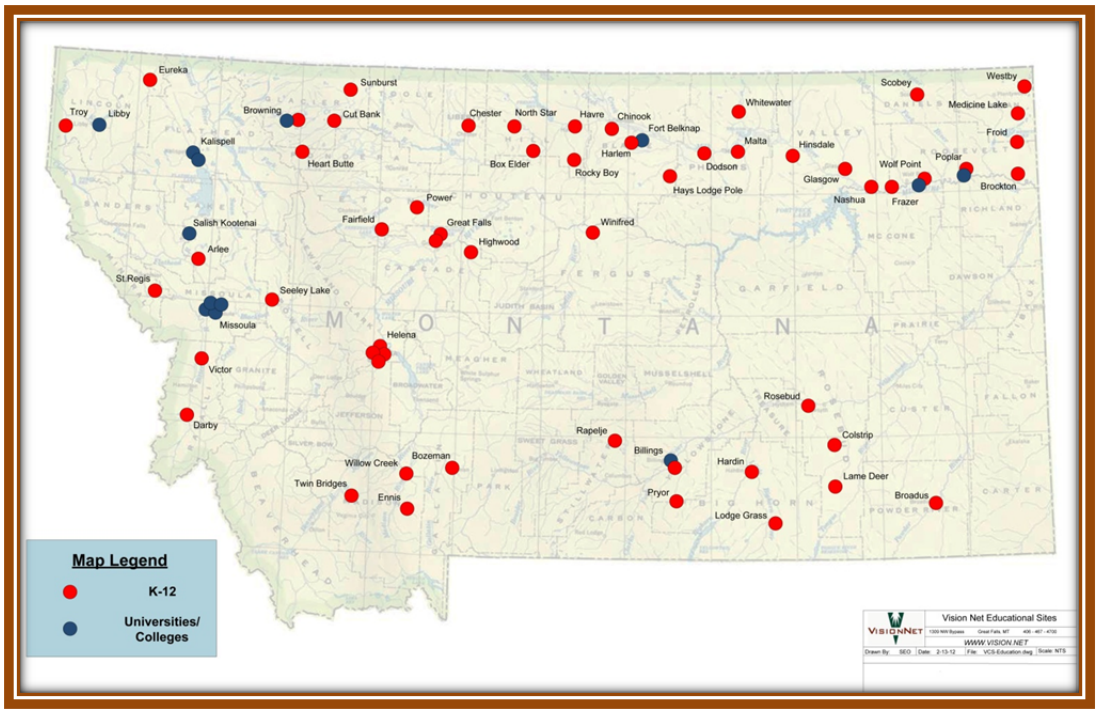
and predictable high cost universal service revenues, paved the way for expanding affordable access to telecommunications. It was the rural telecommunications providers that led Montana into digital economies. Rural consumers, residential and commercial, responded with subscriptions which, in turn, gave impetus to greater broadband-capable inroads.

Montana rural businesses embraced the concept of "communities of interest" years before the term became cliché in national circles. Rural telecommunications providers partnered with hospitals, clinics, schools, libraries, local, state, and tribal governments to advance digital access. Providers aggregated demand by serving not only the anchor tenants in towns (including those that are among the 75.8% having fewer than 1,000 people) but also by extending service to even more remote subscribers located outside those towns. When a provider serves areas as large as 30,000 square miles with population densities averaging 1.6 people/square mile, every single subscriber, including anchor tenant customers, is important for cost recovery.

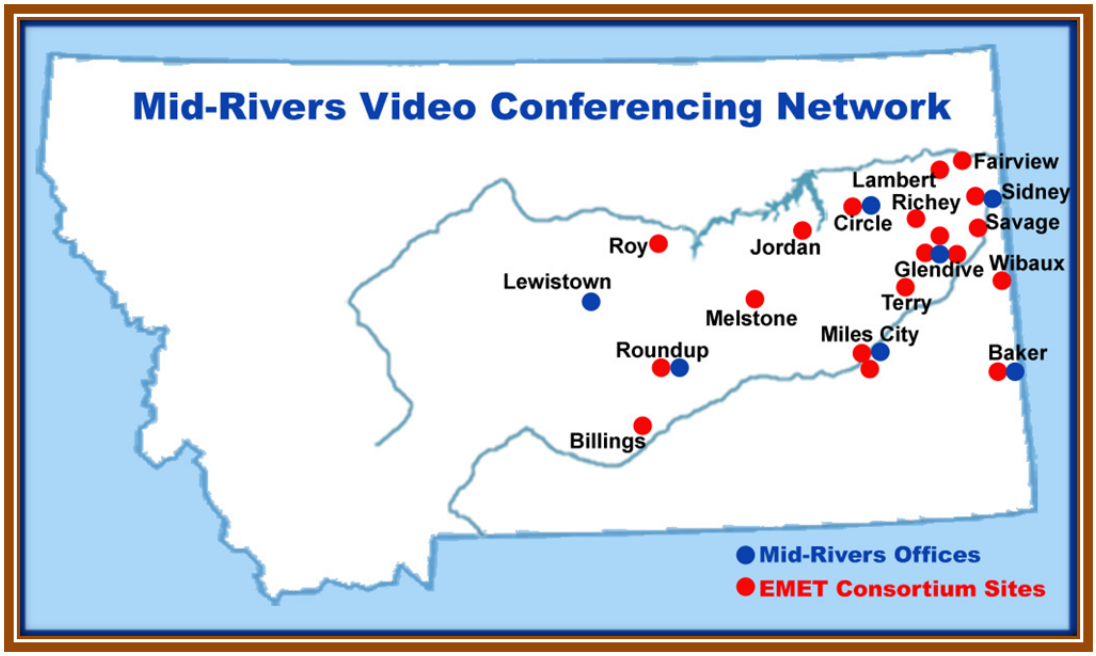
Education, healthcare, and telecommunications face the same distance, density, and demand barriers. These can be prime examples of how sound demand aggregation partnerships can be an efficient and cost effective approach to deliver virtual education and healthcare in remote areas while maintaining and advancing broadband access not just to anchor tenants but also to the more remote subscribers. Distance learning and telehealth applications are delivered to remote areas over the networks of Montana's rural telecommunications companies, including MITS members. This type of partnering is efficient and cost effective.

Vision Net of Montana, owned by a group of rural telecommunications carriers, currently provides virtual education opportunities to students and administrators in fifty-six K-12 locations and thirteen higher education sites in Montana. Mid-Rivers, a MITS member, also aggregates rural demand and connects 19 distance education sites facilitating virtual classrooms across its service area.

Vision Net Educational Sites[5]

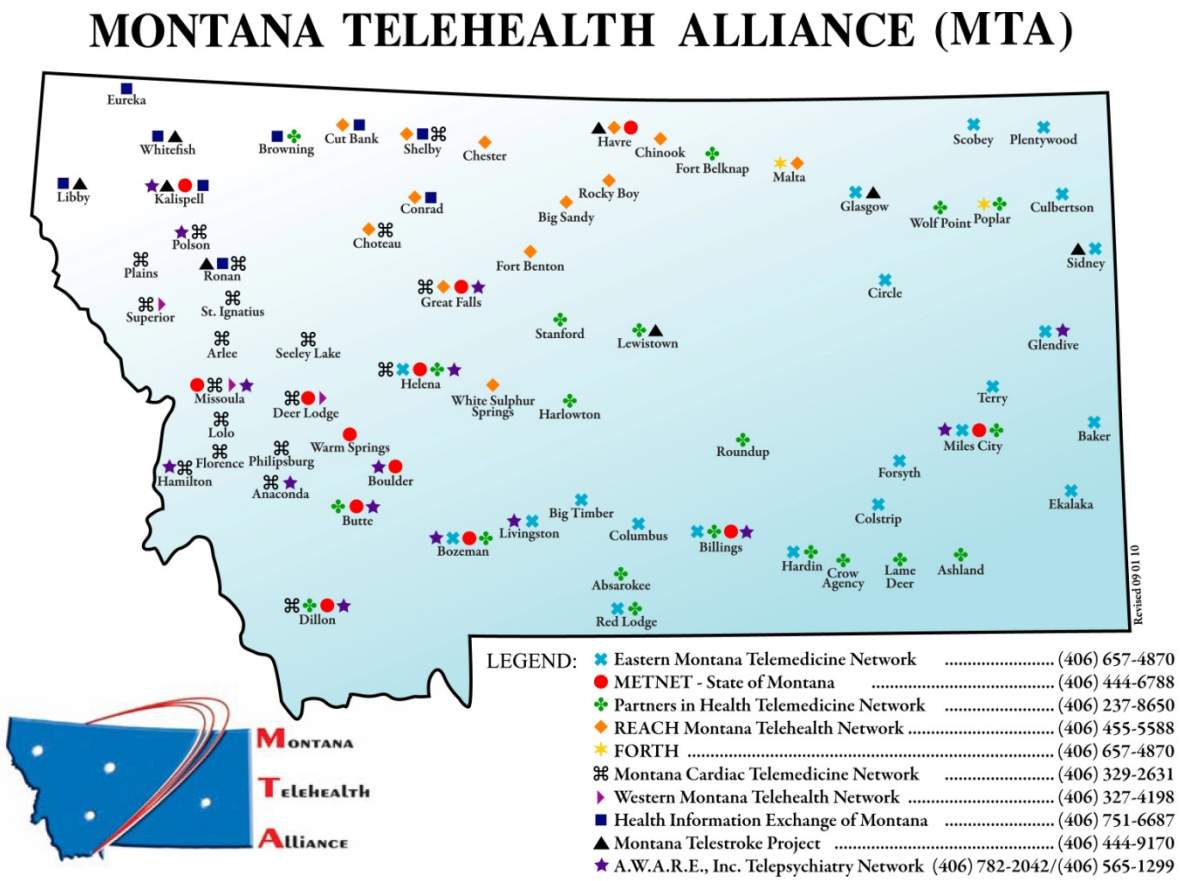


Mid-Rivers Video Conferencing Network[6]



[5] Map provided courtesy of Vision Net, Inc.
[6] Map provided courtesy of Mid-Rivers Telephone Cooperative. Inc.

Another natural partnership is that which fuses healthcare with communications. Telecommunications providers provide the conduit over which telehealth providers deliver health-related services not just into select anchor hospitals but into more remote rural homes and rural businesses as well. Many medical facilities located within the service areas of MITS members pin heath care services directly to digital diagnostics and broadband applications delivered over the networks of their rural telecommunications companies. The graphic[7] below illustrates the wide range of the Montana Telehealth Alliance, a consortium that delivers health-related services through advanced technologies.



Montana health care providers have benefited from access to Universal Service funds through the Rural Health Care Program (RHCP). We commend in particular the Frontier Access

[7] Map provided courtesy of Montana Telehealth Alliance.

to Healthcare in Rural Montana (FAhRM) Project, for its exemplary use of Rural Health Care Pilot Program (RHCPP) funds. By partnering with rural telecommunications providers, FAhRM delivers telehealth using the existing rural networks and the Internet Cloud. It is a fiscally prudent (under $2,000,000) success story that serves as a RHCPP model.

Unfortunately there are other less prudent RHCPP applications that have been awarded large amounts of Universal Service funds to overbuild *existing* telecommunications networks in sparsely populated rural areas.

There is a delicate balance between the 3 D's and sustainable telecommunications networks. It is wasteful and inefficient to fund RHCPP applications that are dependent upon applicants venturing into the telecommunications business in order to sustain the projects. MITS urges the Commission to be vigilant in awarding funding through the RHCP and RHCPP, as well as in compliance oversight associated with RHCP and RHCPP applicants.

In creating the Connect America Fund (CAF), the Commission indicated that the CAF will replace all existing high-cost mechanisms. The Commission further asserts that the CAF will increase broadband availability to homes, businesses, and *community anchor institutions* in areas that do not have – or would not otherwise have – broadband and mobile service in the most remote areas of the nation.[8]

In rural areas, the step between *aggregating communities of interest* and *cherry picking anchor subscribers* is a short one. The limited Connect America funds, RHCP and RHCPP funds, and Schools and Libraries funds must not flow to entities and projects which, in order to be sustainable, clearly intend to cream skim the more easily served anchor tenants away from *existing* rural networks under the asperse of creating communities of interest.

Montana's rural telecom providers have demonstrated their commitment to expand access to quality voice, data, and mobile services in remote rural areas by incurring significant debt and associated financial risks. These providers must not be destabilized by diverting funds to new entities that cream skim and "harvest the low hanging fruit" of anchor communities of interest, while bypassing the more costly and more difficult-to-serve remote customers.[9] This type of

[8] CC Docket No. 96-45 et al, Report and Order and Furthr Notice of Proposed Rulemaking, FCC 11-161 (Rel. Nov. 18, 2011) (Order or FNPRM or Transition Order, ¶20 p11.

[9] "Harvesting the low hanging fruit" is a term associated with less-costly-to-serve communities of interest. It was used by the University of Montana, a partner in the US UCAN Pilot Affiliate Program funded by ARRA stimulus funds, in its January 2012 broadband project summary. It identifies community anchor institutions that "would be relatively easy to connect". Participants in the Montana pilot project includes the Health Information Exchange of

destructive competition will have the effect of inhibiting consumer access to affordable broadband on a larger scale, which is contrary to the Commission's state goal of increasing broadband availability for all Americans.

It would be tragic and ironic if, aspiring to expand access to affordable broadband, the FCC's proposed revisions to USF and ICC instead result in negating or diminishing affordable access to technology in rural America. We are alarmed that the FCC in its determination to connect Americans to digital economies may actually close technology doors and turn off the digital lights for many rural Americans.

III. RESPONSE TO COMMENTS COMMENTARY

MITS members are extremely troubled by the FCC's Report and Order and FNPRM released November 18, 2011. It is difficult to synthesize response comments in these expansive proceedings. The following paragraphs will focus on a number of matters specific to MITS members.

1. We urge the Commission to maintain a cost recovery mechanism that ensures predictable and sufficient funding that spurs long-term investments in ubiquitous networks critical for delivering comparable voice and broadband to <u>all</u> consumers.

Commenters generally expressed support for the modernization of the universal service fund mechanism to support broadband. The Nebraska Public Service Commission pointed out as well that the continued availability of reasonably priced stand-alone voice service in rural areas may no longer be sustainable under the FCC's proposal to modernize the universal service fund.[10] Providers that fail to meet the FCC's requirements for broadband build-outs will forfeit universal service cost recovery on their voice network investments. While most business and residential subscribers expect and embrace broadband access, that conviction is not ubiquitous. There is a risk that the FCC's new proposed programs and funding mechanisms that phase out traditional cost recovery will in turn make access to stand alone voice service unaffordable in rural and remote areas. Voice and broadband are shared components of rural telecommunications networks which require sufficient cost recovery to be sustainable and affordable.

Montana (HIEM), representing "FCC RHCPP award winners". <u>Proposed Montana Project – US UCAN Pilot Affiliate Program</u>, University of Montana, January 1012.

[10] Initial comments to the FCC Report, Order, and FNPRM; Nebraska PSC, Jan 18, 2012, p. 4.

The RLEC Plan set forth by the Rural Associations[11] establishes a path that would ensure predictable and sufficient funding for maintaining and advancing voice and broadband offerings, middle mile costs, conversions and upgrades to IP-enabled switching. MITS supports the RLEC Plan. The reductions proposed in the FCC's Order and the additional reductions that would result from the FNPRM do not support a cost recovery mechanism that ensures predictable and sufficient funding that spurs long-term investments in networks critical for delivering comparable voice and broadband to all consumers. The RLEC Plan is sensible, reasonable, and satisfies the statutory Principles of Universal Service.

2. Many Commenters filed data specific to their companies' impacts of the proposed Quantile Regression Analysis regression identified in Appendix H to the Report and Order and FNPRM. Commenters overwhelmingly provided factual data indicating significant flaws with the regression analysis, particularly for telecommunications providers serving remote and frontier areas.

MITS has serious concerns with the Quantile Regression Analysis. The methodology uses independent variables which are not applicable to rural providers and/or which ignore important independent variables that should be included, such as terrain and subscriber density. In the case of one of MITS members, InterBel Telephone, the analysis performed used an inaccurate FCC map and study area size data that was 21% smaller than the company's actual study area. In the analysis for another of MITS members, Northern Telephone, the model assumed its study area encompassed 2,922 square miles when in fact its actual study area encompasses 3,116 square miles.[12]

> While this by itself is an issue, what is especially troubling is the Commission data showing .15 miles and 3 census blocks in an urban cluster. Northern collectively serves only 1,500 customers, thus it is implausible to assume their study area falls in a populated area that meets this definition, i.e., over 2,500 people…Also troubling is the fact the Commission shows Northern as having a water area of 36 square miles; however, the Cooperative's external engineers compute this at only 12 square miles, a third of the FCC's amount.[13]

[11] National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advancement of Small Telecommunications Companies; and the Western Telecommunications Alliance.
[12] Comments to Report and Order and FNPRM, Northern Telephone Cooperative, Inc., p 2, Jan 18, 2012.
[13] *Id*, p.2.

InterBel further outlines the impacts that adoption of the limitations on capital and operating expenses, as proposed in the Report and Order and FNPRM, would have on its financial results. It points out significant flaws related to the use of the TeleAtlas tool for defining study areas; errors in the census data that the Commission used as inputs to its model; failure to account for unusual terrain conditions or climate-related factors.[14] The model fails to account for rock that must be cut or bored to bury loops. It does not consider Call-Before-You-Dig requirements for the location of high pressure natural gas pipelines, a major cause of concern for companies like Northern and Nemont that deploy infrastructure in oil and gas production country.

Many rural providers have unique challenges and increased costs associated with the process of obtaining rights of way and permits required for compliance with environmental laws and protections of cultural sites unique to the First People and Indian heritage. Many such cost drivers unique to remote and frontier areas were not taken into consideration in the regression analysis. The failure of the model to consider the length of loops, however, is inexplicable when one weighs the impacts of *distance*, density, and demand on the cost of service in rural America. In the case of Northern, they have facilities/loops in excess of 20 miles to serve an individual customer![15] That is not a unique situation in the remote areas served by MITS members.

Mid-Rivers has also identified inaccurate Regression Analysis data. For example, the FCC's Regression Analysis Data (RAD) shows that Mid-Rivers has 24,470.71 square miles of territory when in fact it has 26,796.7 square miles of territory. The RAD shows a population of 18,517 when in fact the correct number is 19,839. It indicates 10,444 households when in fact the correct number is 11,229. The RAD identifies 8,296 census blocks rather than the correct 9,149.

Triangle has 18,063 square miles of territory, yet the RAD determined it had only 15,084 miles. Likewise, CMC has 5,320 square miles, but somehow the RAD identified 10,742 miles for it. The scope of inaccurate information associated with the RAD is alarming.

It is disturbing that the FCC's Report and Order and FNPRM relies on significantly flawed data that, in turn, produces similarly flawed results.[16] It is equally disturbing that the regression analysis does not produce consistent results for similarly situated companies. MITS concurs with

[14] Comments InterBel Telephone Cooperative, Inc., p. 2-3, Jan 18, 2012.
[15] Comments, Northern Telephone Cooperative, Inc., p 3, Jan 18, 2012.
[16] *Id*, p 2.

the many commenters who have verified that the use of the Quantile Regression Analysis as proposed by the Commission would be arbitrary and contrary to the public interest.

3. Facilities-based CLECs operating in Price Cap Carrier areas fall under a unique situation not directly addressed by the Order. We urge the Commission to provide clarification with respect to the unique situation in areas where the price cap ILEC has a subsidized competitor and BOTH have been previously designated ETCs by the State Commissions.

Initial comments submitted in the USF Reform FNPRM fail to address the concerns of consumers served by *rural facilities-based CLECs that have substantially replaced the price cap ILEC in portions of the price cap ILEC study area.* Without clarification of the Order to prevent damaging unintended consequences, such providers will lose all USF support by the end of five years, with the additional threat of the Price Cap ILEC being awarded support to build out where the CLEC has already done so.

The 1996 Act encouraged competition and the build-out of broadband facilities by CLECs. Based upon the Federal statute and the encouragement of the FCC, facility-based CLECs made long term investments in plant and facilities including those in remote costly-to-serve areas. Now, under the FCC's proposals, these facilities-based CLECs will lose the ability to reasonably recover the investments they have made so that thousands of rural consumers may have access to quality networks that deliver both voice and broadband. There is no certain path forward to determine if the competitive carriers serving consumers in these areas will be eligible for funding support.

In Montana, at least 2,500 businesses and anchor institutions and nearly 15,000 residents in seven different communities have broadband today primarily because of the efforts of facilities-based CLECs. The Order will produce unintended consequences in these areas, removing support from the provider that has shown the greatest commitment to service and investment, while rewarding the price cap ILEC that has failed to invest in these costly remote areas even to the point of *still not offering any broadband services throughout entire exchanges*.

Facilities-based CLECs operating in price cap carrier areas fall under a unique situation that is not directly addressed by the FCC Order. While the Order addresses the situation of a Price Cap ILEC with an ***unsubsidized*** competitor, it does not address what happens when there is a ***subsidized*** competitor present – with both the Price Cap ILEC and the CLEC receiving

support today. Clarification is urgently needed with respect to this unique situation, including clarification of how the Right of First Refusal (RoFR) for the Price Cap ILEC will be implemented when there is a *subsidized* competitor that has substantially replaced the Price Cap ILEC as the primary provider in a portion of the Price Cap study area.

This unique situation is present in several Montana exchanges where the Montana Public Service Commission (MPSC) granted ETC status to rural wireline CLECs. Those designations were accompanied by stringent service quality reporting and build-out requirements, because the MPSC recognized not only the benefits that competitive providers were able to offer to many rural Montana communities but also acknowledged the fact that the ILEC appeared disinterested in providing comparable services in these areas.

The Commission should clarify that the one supported provider in an area should be the provider best suited to serve that area and that the said provider may not by default be the Price Cap ILEC. It is very likely that the build-out of broadband could be done more effectively and efficiently in many of these unserved Price Cap carrier areas by other types of carriers, such as rural rate of return carriers including rural CLECs. *Price cap carriers that have continually failed to invest in their own study areas, despite receiving continued support in those areas, should NOT be rewarded now with support that is taken away from the provider that HAS made substantial investments in those areas. Otherwise, the public interest for these communities will be neglected.*

4. It is critical that the FCC ensure that the Mobility Phase I and Phase II auctions and ongoing support mechanisms be specific, predictable, and sufficient as required by the Federal Communications Act.

The Mobility Fund Phase I and II reverse auctions, like many other aspects of the Commission's Reform Order, lack sufficient detail and analysis at this time to be reasonably implemented in the timeframes proposed in the FNPRM. There is far too much at stake in rural America to forge ahead with new, untried methodologies for awarding Universal Service support before each critical detail of these support mechanisms has a chance to be fully reviewed and tested. Proceeding with Mobility Fund Phase II reverse auctions, which will award critical on-going support for preserving and expanding wireless voice and data services in rural America, before Mobility Fund Phase I has been completed and its impacts fully reviewed is simply not a responsible course of action. Many aspects of these plans, such as the

proposal to compare bids across all geographic areas of the country and other details addressed further below, are highly contentious have great potential for producing unintended consequences, many of which are likely to be very detrimental to small businesses and rural consumers.

The American Roamer data the Commission proposes to use in the determination of eligible census blocks for Mobility Fund Phase I and II auctions *will NOT be accurate and must be subject to challenge.* Most small independent wireless providers do not report their coverage to American Roamer (nor are they required to do so), nor do they use the coverage data provided by American Roamer for their coverage maps. The large nationwide companies that do report coverage to American Roamer have a motivation for overstating coverage and mobile data speeds, as those companies use this information in marketing materials. The lack of accurate and reliable coverage information is a significant hurdle resulting in misgivings that challenge the veracity and reliability of the American Roamer data.

In addition, the American Roamer data does not account for 3G construction that may occur between January and September 2012. In Montana, at least two wireless providers covering tens of thousands of square miles are currently in the process of upgrading their networks to 3G; however, it is unlikely that the American Roamer maps will be updated with this information in time to reflect the facts that these census blocks are now served. *The Commission MUST allow carriers to make an appeal of whether an area is eligible or not eligible for Phase I and Phase II Mobility Funding, and must allow sufficient time for these challenges to be reviewed and verified and the eligible list of census blocks updated accordingly.*

Requiring Mobility Fund auction participants to have the necessary spectrum in place prior to participating in the auction is discriminatory to wireless carriers who obtain licenses on a "fill-in" basis. Such *fill-in licensees have been extremely effective in extending wireless voice and data coverage to unserved areas* ignored by the original license holders, which in most cases are the large nationwide carriers. In Montana, for instance, one fill-in licensee has constructed a wireless network covering approximately 10,000 square miles of previously unserved territory utilizing primarily fill-in 800 MHz cellular licenses. That carrier continues to provide the only wireless signal available to the majority of this area today, yet the continued

availability of that coverage, and any future upgrades, may be at risk as that carrier's existing CETC support is phased down to zero.

It is in the public interest for these fill-in carriers, who have demonstrated a long-term commitment to serving rural areas, to be able to participate in Mobility Fund Phase I and Phase II auctions. Because the necessary FCC processes for obtaining a fill-in license typically takes a minimum of four to six months and often also involves extension agreement negotiations with existing license holders (due to those licensees substantially overstating their actual coverage), there is simply no way that carriers relying on the grant of fill-in licenses can participate in the Mobility Fund Phase I or possibly even Phase II auctions given the short timeframes. Fill-in licensees have been very effective in filling gaps in wireless coverage in rural America. Their ability to participate in the Mobility Fund Phase I and Phase II proceedings must be addressed in an expedited and well-defined process.

The use of road miles to determine winning bidders, and the ineligibility of census blocks that do not contain road miles *blatantly discriminates against remote rural areas that are most in need of Mobility Fund support to extend and support wireless networks.* While MITS does not expect the Commission to alter this requirement for Mobility Fund Phase I support given the very tight timeframes, this methodology absolutely must NOT be used for determining eligibility for the awarding of the ongoing Phase II Mobility Fund support. Phase II support will be the only means available to small, rural wireless carriers to replace the vital USF support that will be phased down to zero over the next five years, and without some means of support for these high-cost areas, existing wireless networks are not likely to survive or ever have the resources to implement advanced broadband services. The sheer nature of the geography in states like Montana limits the number of road miles in our state compared to many other states, restricting Montana carriers' ability to access Mobility Funding before the auction even begins.

The Commission's stated desire to repurpose ***high-cost Universal Service support*** to "target support to those areas that tend to be the most regularly traveled," to "maximize the coverage of road miles," and to "achieve the deployment of such services for relatively lower levels of support" is astoundingly contrary to Universal Service law and to Congress' intent for those dollars. Broadband and wireless consumers in all of rural America face a very dire future if this trend of "more bang for the buck" with Universal Service dollars is allowed to continue unchecked.

5. Many State Commissions imposed build-out requirements and service quality compliance for wireless providers designated as CETCs. Those obligations still exist. The FCC's proposed revisions to universal service funding and the new mobility fund must take into consideration State-imposed obligations on wireless CETCs.

Sagebrush Cellular, Inc. (Sagebrush), based in Scobey, Montana, provides cellular telephone services to rural customers in northeast and south central Montana, and in northwest North Dakota. Sagebrush covers an area of over 31,000 square miles. Sagebrush's service area includes Tribal Lands on the Fort Peck Reservation and the Crow Reservation. As of January 2012, Sagebrush has a total of 15,206 cellular customers, of which 6,995 live on the Tribal Lands.

The Montana Public Service Commission (MPSC) designated Sagebrush as a CETC within the areas served by incumbent local exchange carriers, Nemont and Project on December 7, 2005. One of the PSC-imposed conditions of the CETC designation required Sagebrush is to build out facilities and extend coverage to 98 percent of the population in the service areas of the underlying ILECs within three years (Nemont's entire service area) and five years (Project's entire service area).

By year end of 2007, Sagebrush had expanded its wireless network within the Nemont service area 24 cell sites in 2005 to 46 cell sites. It met its build-out requirement one year ahead of the three year period directed by the MPSC.

When the MPSC designated Sagebrush a CETC (December 7, 2005) for the service area of incumbent Project Telephone, Sagebrush had no wireless facilities in that south central area of Montana. Upon designation, it hit the road running, and by the end of 2006, it had constructed eight cell sites in Project's area. Since then, it has added an additional eleven bringing its coverage there to 66% of the population. Sagebrush was posed to do more, but the FCC's implementation of the interim cap on identical support in 2008 put the skids on Sagebrush's aggressive expansion of wireless access. It was so adversely affected by the reduction of universal service support that it was forced to seek from the MPSC an extension of time to continue with the MPSC-imposed build out requirements within the Project Telephone areas.

The MPSC, agreeing that the FCC's interim cap order significantly delays the access of universal service goals for wireless subscribers in Project service area, unanimously found Sagebrush's petition for extension of time to be in the public interest. The MPSC Order approving the extension request underscored the serious impacts and consequences of the interim cap and stated, "At present, the PSC

believes that nothing less than an immediate abrogation of the FCC's interim cap could mitigate the obstacle Sagebrush faces."[17]

Sagebrush continues, to the extent that it is prudent given the reduction of support and the lack of predictability in cost recovery, to extend wireless access in remote Montana. It is in the midst of cellular network upgrades to 3G EVDO with the hopes of ensuring that wireless consumers communicating within its coverage area may have public safety access comparable to that available in less remote areas of the state. The network upgrade will increase call capacity and consumers will experience higher qualities of service.

The universal service funding Sagebrush has received thus far has enabled it to continue to extend its wireless footprints and to maintain and upgrade its facilities. However, at this point in time, Sagebrush is extremely concerned it may not be able to provide service to rural subscribers with the high level of service quality that is its trademark today under the new rules set forth in the USF Transformation Order.

In its Petition for Reconsideration of the FCC USF Order, Montana PCS, LLC (MTPCS) requested "a limited exception from the CETC support amount baseline calculation methodology for CETCs subject to state mandated network build-out requirements in order to provide more equitable treatment and a greater chance to recover costs of investments and service expansion pursuant to such state requirements".[18] Sagebrush concurs and supports MTPCS' Petition.

Montana is one of the least densely populated states in the nation. The continuing shrinkage of universal service cost recovery funding has a substantial adverse impact on Sagebrush and the rural consumers it serves. The quality network Sagebrush has built with the assistance of USF still needs to be maintained. Sagebrush is committed to continue providing the same level of quality services to the rural customers as it has been and it cannot do that without sufficient support.

6. Universal service fund (USF) and intercarrier compensation (ICC) reforms must protect rural capital investments, provide stability and sustainability in the telecommunications industry, and ensure opportunities for positive economic development in rural America.

Rural telecommunications providers have invested heavily in their networks to ensure that rural subscribers have access to telecommunications comparable to their urban

[17] MT PSC Order No. 6687b
[18] Petition for Reconsideration of MTPCS, LLC., Dec 29, 2011.

counterparts. They have borrowed money from public and private financial institutions to expand networks and maintain infrastructure. They incurred debt that is dependent upon predictable cost recovery mechanisms and sufficient revenue to recover their authorized rate of return.

The Report, Order and FPNRM, with its proposed changes to cost recovery, affects all rural rate of return providers, their customers, and their communities. They can no longer be assured of predictable and sufficient cost recovery. The FCC's proposals will have a rippling, downward economic effect across the industry, consumers, cities, towns, and communities. It will drastically affect rural economic development.

MITS members are already feeling the impacts of the uncertainties surrounding cost recovery. For example, InterBel has begun to scale back 2012 construction at least 50% of what was previously planned due to the uncertainty of cost recovery with the FCC reform. Its five-year modernization plan and $20 million RUS loan application has now been delayed. A loan design process which InterBel worked on for 18 months, then submitted to RUS for approval in September 2011, has been delayed until further data is submitted and an impact study is determined. The potential delay of loan approval beyond March 31, 2012 will cause InterBel to miss the entire construction season, given the time frame required for RFPs, contractor selection, ordering materials and working within the extremely short construction season in northwestern Montana.

They, and other MITS members, have many concerns including the $2 billion cap for RLECs; the Regression Analysis and the inaccurate FCC map and study area size data; the flawed National Broadband Mapping, and the downward spiral of cost recovery. These factors will ultimately lead to declining economic development in rural areas. The impact of the FCC "reform", as it relates to jobs, is now surfacing as a significant impact that will spread wide and deep through the USA. It is not just rural jobs at risk given the cutbacks and caution used going forward, but the trickle-up effect of manufacturing and service provider companies as well. Manufacturers, distributers, installers and more will all experience the cut-backs from rural investments. In the case of InterBel, the direct impact for 2012 from the FCC reform is scaling-back construction plans 50% of what was planned. This will directly affect the number of local construction jobs and/or the amount of time they work for InterBel this year. InterBel's orders for equipment and materials is also reduced by 50%, which will

impact the manufacturing and distribution jobs of Zhone Technologies (a USA manufacturer in Largo, Florida), along with other U.S. equipment distributors from Greybar, Border States, and Power & Telephone Supply.

InterBel and MITS companies are not unique. The negative economic impacts of the proposed FCC reform will be felt from east to west, from north to south across rural America. The RLEC Plan of the joint rural associations is intended to meet specific objectives that enable adequate cost and revenue recovery and to encourage regulatory certainty. MITS urges the FCC to revisit the components offered by the RLEC Plan, to protect existing investments in high cost areas *and* to offer future broadband support.

III. CONCLUSION

We urge the Commission to reframe from adopting its proposed revisions to universal service and intercarrier compensation at this time. There are far too many unresolved questions regarding the need and effect of the FCC's proposals. The FCC should ensure sufficient, comparable, and predictable access to universal service telecommunications and broadband. It should delay adoption of proposed changes at this time of economic uncertainty.

RESPECTFULLY SUBMITTED

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